

REMARKS

Applicants acknowledge receipt of the Examiner's Office Action dated June 27, 2007. Claims 1, 4, 11-12, 15-16, 19-20, 23-24, and 27-31 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Aronberg et al., U.S. Patent No. 5,933,647 (Aronberg). Claims 1, 4, 8-12, 14-16, 18-20, 22-24, and 26-31 are rejected under 35 U.S.C. § 102(b) as being anticipated by Sadowsky, U.S. Patent No. 5,790,796 (Sadowsky). Claims 5, 13, 17, 21, and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sadowsky as applied to claims 1, 4, 11-12, 15, 19, and 23 above, and further in view of Meizlik et al., U.S. Patent No. 6,112,323 (Meizlik). Claim 7 is rejected under 35 U.S.C. § 102(a) as being unpatentable over Sadowsky as applied to claim 1 above, and further in view of Foster, U.S. Patent No. 6,986,134 (Foster). Claim 6, is rejected under 35 U.S.C. 103(a) as being unpatentable over Sadowsky as applied to claim 1 above, and further in view of Hansen, U.S. Patent No. 5,838,907. In light of the foregoing amendments and following remarks, Applicants respectfully request the Examiner's reconsideration and reexamination of all pending claims.

As noted, Claims 15-22 and 27-31 were rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Claims 15-18 are cancelled. In rejecting Claims 19-22 and 27-28, the Office Action asserts that the subject matter (computer readable medium) is not limited to that which falls within a statutory category of invention since in accordance with the present Specification , computer readable medium may be digital and analog communication links (i.e., carrier waves). The Office Action points to page 17, paragraph 0076 as indicating that the computer readable medium may include digital and analog communication links. Applicants have amended paragraph 0076 by removing the terminology referred to in the Office Action. Accordingly, Applicants submit that all claims are now in compliance with 35 U.S.C. §101.

As noted above, each of the independent Claims 1, 11, 19, 23, 27 and 30 were rejected under 35 U.S.C. §102 as being anticipated by Aronberg and Sadowsky. Applicants disagree with the rejection of these claims. Independent Claim 1 recites providing a criterion and a location of the first data. Independent Claim 1 makes clear that the first data is provided when a second request is made on behalf of the requesting instance for the first data upon determining that the requesting instance satisfies the criterion. Again, it is important to note that independent Claim 1 recites providing the location of the first data in addition to the criterion.

The Office Action points to column 4, lines 28-61 of Aronberg as teaching all the limitations of independent Claim 1, including the limitations of providing the criterion and the first data. This cited section of Aronberg describes agent detection of a newly scheduled application. Specifically, this cited section of Aronberg describes that each agent 103, 104 detects a newly scheduled application, and evaluates the condition for distribution to see if the distribution to it is appropriate. Presumably, distribution refers to distributing the newly scheduled application. If the distribution is appropriate for a particular agent, that agent pulls down the distribution, i.e., the agent performs the actual distribution. If the distribution is not appropriate for a particular agent, then the agent goes back to sleep, i.e., does not perform a distribution.

Presumably, the Office Action equates the foregoing with the *implied* limitation of independent Claim 1 that a determination is made as to whether the requesting instance satisfies the criterion. In other words, Applicants presume that the Office Action equates the “distribution condition” of Aronberg with Claim 1’s criterion. The Office Action on page 4 asserts that column 4, lines 28-56 of Aronberg discloses a “profile” which is downloaded to an agent which contains a criterion and a location (i.e., file name) of data. Column 4, lines 28-56 of Aronberg does not describe that the profile contains the distribution condition, which is equated with

Claim 1's criterion. Rather, column 4, lines 24-26 describe the profile as a set of instructions to the computers 103 and 104 on how to install any application. According to column 4, lines 48-50, an administrator profiles an application and the profile is stored in a database of the file server 102. Again, the cited section of Aronberg does not teach or fairly suggest that the profile contains the distribution condition described above, which in turn is equated with Claim 1's criterion, as argued in the Office Action.

More importantly, the profile mentioned in column 4, lines 28-56 is not said to store "a location (i.e., file name) of data." Although the profile is said to be stored in a database on the file server 102, this does not necessarily mean the profile contains "a location (i.e., file name) of data." Granted, column 4, lines 28-61 describes that agents perform the actual distribution. Presumably, the distribution relates to the application that was profiled. If the "location" of independent Claim 1 is equated with the location of the application that is pulled down by the agent, the cited sections of Aronberg cannot anticipate since the cited sections are silent as to whether the location of this application is provided to the agents 103 and 104. For these reasons, Applicants assert that independent Claim 1 is patentably distinguishable over Aronberg. The remaining independent claims recite the same or similar features described above. For these reasons, Applicants assert that the remaining independent claims are likewise patentably distinguishable.

The Office Action also asserts that the Abstract of Sadowsky anticipates the independent claims of the present application, including the acts of providing a criterion and a location of first data. Applicants have reviewed the Abstract of Sadowsky and can find no teaching or fair suggestion of the aforementioned limitations of the independent claims. Sadowsky relates to polymorphic package files to update software components. The Abstract describes a server that provides updated software programs to clients independent of the type of client and independent

of the type of server. A polymorphic master object has a predetermined structure known to all servers and clients. Upon connection of the client to the server, the server provides a master object to the client. The polymorphic master object “includes fields that indicate polymorphic package files that are available for transfer to the client.” One such field is a distributed install file that includes instructions for instantiating the selected package file. Upon receipt, either the user or the client selects a package file. The client provides a request to the server for the selected file, which the server provides to the client. It is noted, however, that the Abstract is silent as to whether the client selects the file based upon criterion provided by the server. Presumably the master object is cited by the Office Action as containing the criterion and the location of the first data, as required by independent Claim 1. However, the Abstract does not so assert. As such, the Office Action has failed to provide a *prima facie* basis for rejecting independent claim 1 as anticipated by Sadowsky. The remaining independent claims contain limitations which are the same or similar to the limitations of independent Claim 1. For the same or similar reasons that independent Claim 1 is patentably distinguishable, it follows that the remaining independent claims are likewise patentably distinguishable.

CONCLUSION

Applicants submit that all claims are now in condition for allowance, and an early notice to that effect is earnestly solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is requested to telephone the undersigned.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to deposit account 502306.

Respectfully submitted,



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